

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**In re:**

**DONALD WILLIAM KNUDSEN  
and CAROLYN P. KNUDSEN,**

**Debtors.**

\*  
\*  
\*  
\*  
\*  
\*

**Case No. 95-00248-6B3**

**MEMORANDUM OPINION**

At Orlando, in said District on the 10th day of October, 2001, before Arthur B. Briskman, Bankruptcy Judge.

This matter came before the Court on the Motion for Determination of State Court Jurisdiction by Donald William Knudsen and Carolyn P. Knudsen ("Debtors"). Appearing before the Court were Alana C. Brenner, Esq., attorney for the Debtor; and Andrew L. Fivecoat, Esq. attorney for creditor ("Litton"). After reviewing the pleadings and evidence, and hearing live testimony and arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

The Debtors filed and successfully completed a Chapter 13 bankruptcy and received a discharge from this Court in July, 1997. The Debtors later experienced difficulties in reconciling their payments to Litton and filed a Motion for Contempt of the Discharge Injunction here. The parties settled the dispute by written stipulation, which provided for the reinstatement of the Debtors' mortgage and a clearing of the Debtors' credit. An Order Approving Stipulation for Settlement, Withdrawing Motion for Contempt, Releasing Funds in

Court Registry and Closing Bankruptcy Case was entered on January 4, 2000. Jurisdiction was specifically retained in paragraph 5 of the order to enforce the settlement stipulation.

The Debtors allege their mortgage had not been reinstated and their credit had not been cleared as of six months after the court-ordered approval of the settlement stipulation. The Debtors filed suit in state court for defamation of credit and negligence. The state court entered a default on December 12, 2000 when Litton failed to respond despite having been served twice. A default final judgment for \$57,864.25 plus punitive damages of \$57,000.00 was entered on March 22, 2001. Litton filed a Motion to vacate the final judgment based on excusable neglect and also asserted that the state court lacked jurisdiction. The state court judge stayed the proceeding and requested the bankruptcy court issue a ruling on the issue of jurisdiction.

### **CONCLUSIONS OF LAW**

Jurisdiction is properly in the bankruptcy court pursuant to 28 U.S.C. §1334 which creates “original and exclusive jurisdiction of all cases under title 11” and “original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.” Jurisdiction is proper based not only on federal law, but also on Florida law. *See Wade v. Clower*, 114 So. 548 (Fla. 1927). The Florida Supreme Court found in *Wade* that when state and federal courts have concurrent jurisdiction, the tribunal whose jurisdiction first attaches retains jurisdiction exclusively until the judgment rendered in the first action is satisfied. *Id.* “This jurisdiction continues until the judgment rendered in the first action is satisfied, and extends to proceedings which are ancillary or incidental to the action first brought.” *Id.*

The bankruptcy court has exclusive jurisdiction to hear the case despite the fact that the Debtors chose to attempt to litigate the issue in state court. The issue was first litigated here, and jurisdiction was expressly retained in order to enforce the settlement stipulation agreed to by the parties. The bankruptcy court is the proper forum for this action and will adjudicate the case.

The case will not be accepted in its current posture.

Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void.

*Malone v. Meres*, 109 So. 677, 683 (Fla. 1926).

Jurisdiction properly resides in the bankruptcy court and the issue should be litigated in this forum. This case will not be accepted in its current posture and the default judgment will not be recognized because jurisdiction was exclusively in this Court.

This matter is set for Status Conference on December 18, 2001, at 11:30 a.m., in Courtroom A, Fifth Floor, 135 West Central Boulevard, Orlando, Florida 32801.

Dated this 28th day of November, 2001.

/s/ Arthur B. Briskman

ARTHUR B. BRISKMAN  
United States Bankruptcy Judge